

# UNION SYNDICALE



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## Brexit and YOU

### WARNING

Nothing on Brexit and on its consequences is settled yet. Union Syndicale tries to inform you to the best of our knowledge but we cannot guarantee that the situation will not evolve in an entirely different way. We will try to update this document as soon as we get new information.

Now that the referendum is over, what will happen to staff ?

It is important to keep in mind that the referendum is only the starting point of a long process. Nobody knows yet when Article 50 of the Treaty on European Union will be activated (some even think it might not be after all). After its activation, the Union (i.e. the 27 remaining Member States) must negotiate and conclude an agreement with the UK, setting out the arrangements for its withdrawal and its future relationship with the Union (there might however be two separate negotiations and agreements for those two aspects). The agreement would be concluded on behalf of the Union by the Council after obtaining the consent of the European Parliament. The Treaties would cease to apply to the UK from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification by the UK of its intention to withdraw, unless the European Council (the 27), in agreement with the UK, unanimously decide to extend this period.

So, once Article 50 is activated, the negotiating process will probably last two years, possibly even longer.

Until the negotiations have been concluded and a date set for its withdrawal, the UK remains a Member State of the EU, with all its rights and obligations. Before that date, there should theoretically be no consequences for staff.

The lengthy process will include negotiations on many aspects, entailing huge social, legal, economic and political implications, but all matters relating to staff and to the staff regulations will also have to be negotiated. Staff representatives will be consulted. Union Syndicale will be party to the negotiations and consultations and will endeavour to find - and fight for - the best solutions for all staff, i.e. for UK colleagues who are not responsible for the decision of their fellow citizens and for the other colleagues, who do not have to bear the consequences of the Brexit.

For the time being, we can only give a few indications as to what is or is not possible on the basis of the Staff Regulations.

### I am a UK citizen. Will I keep or lose my job ?

It is of course impossible to answer that question right now.

Both President Juncker and President Schulz have immediately issued reassuring statements to staff (“As European civil servants you have always been loyal to our Union, contributing tremendously to our common European project. And so it will be in this spirit of reciprocal loyalty that I will work together with the Presidents of the other European institutions to ensure that we can all continue counting on your outstanding talent, experience and commitment.”).

On the other hand, we cannot disregard the fact that the UK is a net contributor to the EU budget. The budget reduction corresponding to the UK net contribution will probably also have an impact on Heading V (administration).

Even if the institutions have no intention to dismiss UK colleagues, even if Union Syndicale, and probably the other trade unions as well, are opposed to any dismissal and to any reduction in the number of posts, we can not exclude that a number of our colleagues will have to leave the institutions.

Of course, UK colleagues will also remain, i.a. because English will still be an official language and, at short notice, it would be very difficult to find EN translators and interpreters who are nationals of another Member State.

In this case, the institutions will have to establish clear criteria to decide who can remain and who must leave. Otherwise, dismissing only some colleagues with UK nationality could be considered a breach of the principle of equal treatment, and the colleagues concerned would be able to contest their dismissals before the Court.

### **Dismissing officials with UK nationality requires a decision of the Appointing authority**

According to Article 28 of the Staff Regulations, "An official may be appointed only on condition that [...] he is a national of one of the Member States of the Union, unless an exception is authorised by the appointing authority."

Article 49 provides that "An official may be required to resign only where he ceases to fulfil the conditions laid down in Article 28 (a) [...]."

This means that, once the UK has formally left the EU, colleagues with UK nationality could only be recruited if an exception is authorised by the appointing authority. Current UK officials **might be required** to resign, but it would have to be on the basis of a decision of the appointing authority and it would not be automatic.

### **Keeping other servants (contract staff, temporary staff, parliamentary assistants) with UK nationality requires a decision of the authority**

According to Article 12 (2) of the CEOS (Conditions of Employment of Other Servants), "A member of the temporary staff may be engaged only on condition that [...] (a) he is a national of one of the Member States of the Union, unless an exception is authorised by the authority ...". Similar rules for contract staff and parliamentary assistants are to be found in Articles 82 and 128.

Article 47 CEOS provides that "[...] the employment of temporary staff shall cease [...] where the servant no longer satisfies the conditions laid down in point (a) of Article 12(2), subject to the possibility of authorising an exception under that provision. Should the exception not be authorised, the period of notice referred to in point (ii) shall apply.". The same is true for contract staff and parliamentary assistants (Articles 119 and 139 CEOS).

This means that, once the UK has formally left the EU, the contracts of all UK other servants will be terminated unless the authority grants them a derogation.

### **What could the consequences be for the colleagues concerned ?**

For colleagues who would keep their jobs there would, of course, be no direct consequence. But they might fear impacts on their careers, especially if they intend to apply for high-level or sensitive jobs (see below).

For colleagues forced to leave, the situation will depend on the legal basis chosen. In any case, should a large number of colleagues have to leave, that could be considered a collective dismissal. There would be negotiations with the staff representatives and the institutions would be under an obligation to ensure that the officials concerned are granted sufficient social security rights.

**(a) Article 49 : Compulsory resignation.** No provisions exist for the day after resignation. People could be left without any source of income and social security rights apart from the pension rights which they have already acquired, which would of course not be lost. They might continue to be covered by our sickness insurance for a period of 6 months if they were not in gainful employment.

Union Syndicale is opposed to the application of Article 49. If the institutions are finally obliged to dismiss a number of UK colleagues, there are other possibilities, respecting the acquired rights and legitimate expectations of our colleagues.

Application of Article 49, especially if there are other solutions, could also be considered by the Court of Justice as violating the duty of care of the administration.

**(b) Articles 41, 42c and 50 : Non-active status, Leave in the interest of the service and Retirement in the interests of the service.**

The application of these three articles of the Staff Regulations would result in similar situations for the members of staff concerned, but they correspond to different cases :

- Article 41 would only be applied if the posts were scrapped. The Joint Committee would be consulted on the posts and on the officials concerned.
- Article 42c could only be applied to a very limited number of colleagues and at the earliest 5 years before their pensionable age. The appointing authority would have broad room for manoeuvre for the application of this article.
- Article 50 applies only to Directors and Directors-General, and the appointing authority also has broad room for manoeuvre.

It is likely that Article 50 will be applied to high-level officials with UK citizenship. Articles 41 and 42c could also be applied if the conditions were met. The application of these articles is much more favourable for officials than Article 49. He or she would receive his or her full salary for the first 3 months, 85% for the next 3 months, 70% for the next 5 years after that and 60% thereafter. Moreover our sickness insurance and accident insurance schemes would continue to apply and the colleagues concerned would continue to build up pension rights.

As far as other servants are concerned, if their contract is terminated, they must be given a period of notice (between 1 and 10 months) and they are entitled to an unemployment allowance for a maximum of 36 months. There is no provision corresponding to Articles 41, 42c or 50 that would apply to them.

Of course, none of this applies to UK colleagues who also have the nationality of another Member State. We have heard that some colleagues are contemplating applying for Belgian nationality. That could be an option for those who fear losing their jobs. But it requires ties with Belgium, and there is no certainty that living in Belgium merely for the sake of working for the EU would be considered sufficient in this regard.

## **Other consequences for UK citizens**

### **1. Pension rights**

Irrespective of the number of officials and other servants with UK nationality who will continue to work for the institutions, the EU would still be obliged to grant them their pension rights for the period spent working for the institutions, plus any transfers made into the pension scheme and the periods covered by the allowances under Articles 41, 42c and 50.

For colleagues who would have to leave the institutions before retirement age, the situation would depend on whether they have served at least 10 years in the institutions. In this case, they would be entitled to keep their pension rights in our regime and, at retirement age, would benefit from an EU pension with sickness insurance coverage. For those who would have to leave without having completed 10 years of service, the only option would be to transfer out of the scheme in order to receive a pension from a national or private pension scheme at a later date.

Even for UK colleagues keeping their pension rights in our scheme, the remaining Member States might decide that those pension rights did not have to be paid for from a budget to which the UK no longer contributes, and they could insist on a financial contribution from the UK. On the other hand, at this stage, it does not seem possible to oblige UK colleagues who have served at least 10 years to transfer out their pension rights so that they would no longer have to be paid for from the EU budget.

### **2. Careers**

The Staff Regulations prohibit any discrimination based on nationality. As long as the UK has not left the EU no UK colleague may be discriminated on grounds of his or her nationality. The same applies to UK colleagues who will keep their job. All posts should be open to them. They should be promoted or appointed to vacant posts exactly as if they were nationals of another Member State.

As far as one believes that our mobility and promotion procedures are absolutely objective and fair the conclusion must be that a Brexit would have no impact at all on the careers of UK staff remaining in the EU institutions.

If one is less confident in the objectivity of our procedures, one could imagine that the situation will be different according to whether or not we are speaking of a high-level or sensitive post. UK colleagues occupying or wanting to occupy such posts will most certainly be at a disadvantage. But as regards other posts, Union Syndicale considers that any discrimination in the promotion procedure would be unacceptable.

### **3. Recruitment**

The same reasoning applies to recruitment during the period until the entry into force of the withdrawal agreement. It would be a violation of the Staff Regulations to refuse to recruit someone who had passed an open competition or to employ a candidate in a temporary or contract post on the ground that he or she is a UK national. Here again, assuming that our recruitment procedures are absolutely objective and fair, UK citizens should continue to be recruited as before, until the actual date of Brexit.

## **What other consequences would there be ?**

### **1. Pensioners residing in the UK**

For pension rights acquired before 1st May 2004, pensions are subject to the correction coefficient for the Member State of residence. For pensioners residing in the UK, this coefficient is currently 134.7. As soon as the UK ceases to be a Member State of the EU, pensions will be paid there without any correction coefficient.

According to Article 12 of the Protocol on the Privileges and Immunities, remunerations and pensions paid by the Union are subject to our own income tax but exempt from national taxes. Once the UK has withdrawn from the EU, it will no longer be bound by the Protocol and it could levy income tax on pensions paid to former EU officials living in the UK, unless an agreement between the UK and the Union, similar to the one existing with Switzerland, confirms the exemption from UK taxes.

### **2. Family members residing in the UK**

Officials and other servants have the possibility to transfer, with application of the correction coefficient, part of their remuneration for children attending an education establishment in another Member State and for other persons residing in the relevant Member State to whom they have an obligation.

As soon as the UK ceases to be a Member State of the EU, those transfers to the UK will not be subject to any correction coefficient.

### **3. Unemployment allowance for temporary and contract staff**

To be eligible for an unemployment allowance, former members of temporary or contract staff must be registered with the employment authorities of the Member State in which they establish their residence. UK temporary and contract staff who returned to the UK after termination of their contract would therefore not be entitled to any unemployment allowance.

### **4. Place of origin in the UK**

Since 2014, special rules have applied to colleagues who have their place of origin outside the EU or EFTA. After leaving the EU, the UK could re-join EFTA and its current four Member States (Iceland, Liechtenstein, Norway, Switzerland). In that case, nothing will change for colleagues whose place of origin is in the UK.

Otherwise, colleagues whose place of origin is in the UK and who do not have the nationality of another Member State will lose any right to reimbursement of the annual travel expenses. They will, however, keep the two and a half days of travelling time if they are entitled to the expatriation or foreign residence allowance.

Colleagues whose place of origin is in the UK will also keep the right, upon termination of service, to reimbursement of travel expenses and removal expenses to their place of origin. But if colleagues whose place of origin is not in the UK want to resettle in the UK upon termination of service, their place of origin will be placed at the EU border.

### **5. Tax domicile in the UK**

Pursuant to Article 13 of the Protocol on the Privileges and Immunities, EU officials keep their tax domicile in the country it was in before they took up service, “provided that it is a member of the Union”.

As soon as the UK ceases to be a member of the Union, the tax domicile of the colleagues concerned will be moved to their country of actual residence and they will have to pay taxes on their world income (excluding EU pay and pensions) in that country.

## **6. Dependent children**

In addition to the legitimate, natural or adopted children of the officials (or of their spouse), any child whom the officials have a responsibility to maintain under a judicial decision based on Member States' legislation on the protection of minors must be treated as a dependent child. A decision by a UK court, based on UK legislation, will no longer be recognised by the EU and the children concerned will no longer be considered as dependent children.

## **7. Staff posted in the UK**

The European Commission has offices in London, Cardiff, Edinburgh and Belfast, and the Parliament has information offices in London and Edinburgh. London is also home to two EU agencies: the European Medicines Agency and the European Banking Authority. The offices of the Commission Representation in the UK would be replaced by a Union delegation, as in many other third countries, with staff covered by Annex X of the Staff Regulations. As only nationals of a Member State can be posted outside the EU, without exception, the British colleagues working in the Commission Representation and Parliament's office would not be able to continue working there once the UK had left.

As for the two Agencies, they would have to be transferred to another Member State.

## **8. Staff posted outside the Union**

According to Annex X to the Staff Regulations (and, for diplomatic staff, to the Vienna Convention), only Member State nationals can be posted in third countries. In the Union delegations in third countries, officials and contract staff of the Commission and of the EEAS work side by side with temporary staff seconded to the EEAS by the Member States.

Temporary staff seconded by the UK will not be able to keep their jobs.

Officials with UK citizenship will not be able to continue working for the Union delegation either but could be given a post in Brussels or in another Member State if the institutions so decide.

The outlook is more negative for contract staff. Contract staff in delegations are "Article 3a contract staff" of function groups II, III and IV. Inside the Union, they can only be assigned to an office, an agency or a representation of the Commission. It will therefore be difficult for either the Commission or the EEAS to keep them.

## **9. European schools**

The European Schools were established on the basis of the "Convention defining the Statute of the European Schools", which is Treaty formally independent from the EU treaties. The UK has not yet indicated that it wanted to denounce that convention and, from a legal point of view, the Brexit could not change anything for the European Schools.

In practice, however, the European Schools are often regarded as part of the European Union "sphere" and the UK might well reduce its participation.

Most teachers in the European schools are seconded by the Member States. For a number of years now, the UK has stopped seconding new teachers. It might terminate the secondment of current teachers, which would cause a problem for the recruitment of English-speaking teachers in the schools. The question also arises as to whether there would be a justification for English remaining a "Language 2" in the European schools.

Even if most UK colleagues would keep their jobs, there will inevitably be, in the medium term, a strong reduction in the number of UK colleagues and therefore also of children who would be enrolled in the English section. This could threaten the existence of an English section in some schools.

The European baccalaureate is officially recognised as an entry qualification for higher education in all the countries parties to the convention on the European Schools, as well as in a number of others. As long as the UK is still a party to that Convention, European Baccalaureate diploma holders will still be accepted in UK universities and other higher education institutions.

## **10. Acquiring another nationality**

A number of UK colleagues envisage taking on another nationality. In case of application of Article 49 of the Staff regulations, this would prevent them from compulsory resignation. It would also prevent other servants from being dismissed on the basis of Articles 47, 119 and 139 CEOS.

On the other hand, if the institutions decide to reduce the number of UK colleagues on the basis of Articles 41, 42c and 50 of the Staff Regulations, there is no guarantee that bearing another nationality would save them from losing their jobs.

We are still investigating the possibilities for staff of the institutions to acquire Belgian nationality on the basis of their residence in Belgium. But it might be important to recall the rules on expatriation allowance.

*An expatriation allowance equal to 16% of the total of the basic salary, household allowance and dependent child allowance paid to the Established Official shall be paid :*

*(a) to officials :*

- who are not and have never been nationals of the State in whose territory the place where they are employed is situated, and*
- who during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation within the European territory of that State. For the purposes of this provision, circumstances arising from work done for another State or for an international organisation shall not be taken into account ;*

*(b) to officials who are or have been nationals of the State in whose territory the place where they are employed is situated but who during the ten years ending at the date of their entering the service habitually resided outside the European territory of that State for reasons other than the performance of duties in the service of a State or of an international organisation.*

If UK citizens posted in Belgium benefit from the 16% expatriation allowance and take on Belgian nationality,

- they will maintain the right to the expatriation allowance if they haven't lived in Belgium at all during the 10 years preceding their recruitment in the institutions ;
- they will lose the right to the expatriation allowance in the other cases.

If UK citizens posted in Belgium take on another nationality (other than BE), that does not affect their right to the expatriation allowance.